UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,823	02/25/2004	Andrew D. Bocking	291010-00004	5088

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EXAMINER
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ART UNIT	PAPER NUMBER
2191	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	*10/786,823*	BOCKING ET AL.
	Examiner	**Art Unit**	
	Qing Chen	2191	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>07 January 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Anna Deng/
Primary Examiner, Art Unit 2191

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding the Applicant's arguments on page 8 to page 16 of the "Remarks" pertaining to the rejections of the claims made under 35 U.S.C. § 103(a), the Applicant first asserts that McLlroy does not teach or suggest a hardware identifier representing a target system. Applicant also asserts that Deguchi does not teach or suggest the refined recital of failing to find a received vendor identifier at a host system and downloading, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier representing a target system over a communication channel from such host system to such target system. Applicant also asserts that there is no teaching or suggestion in McLlroy of a program associated with the recited hardware identifier representing the recited target system being stored at such application source. Lastly, the Applicant also asserts that Deguchi does not teach or suggest a program associated with a received hardware identifier representing a target system. Applicant's arguments are fully considered, but found to be not persuasive for at least the following reasons:

First, with respect to the Applicant's assertion that McLlroy does not teach or suggest a hardware identifier representing a target system, the Examiner respectfully submits that McLlroy clearly discloses a hardware identifier representing a target system (see Column 12: 45-47, "… portable computer systems 920, 922, 924 and 926 can also communicate their hardware and software attributes to software manager 950."). Note that portable computer systems (target systems) can send their hardware attributes (hardware identifiers) to a software manager.

Second, with respect to the Applicant's assertion that Deguchi does not teach or suggest the refined recital of failing to find a received vendor identifier at a host system and downloading, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier representing a target system over a communication channel from such host system to such target system, the Examiner respectfully submits that Deguchi clearly discloses "failing to find a received vendor identifier at a host system and downloading, responsive to said failing to find said received vendor identifier at the host system, data associated with a received hardware identifier over a communication channel from the host system to a target system" (see Paragraph [0070], "Referring back to FIG. 15, if at step 1540 server terminal 105 does not find a matching vendor ID in vendor ID database 864 corresponding to the device ID, then at step 1580, server terminal 105 is configured to retrieve from playlist database 862 information corresponding to the bookmarked music clips and to transmit the retrieved information to user terminal 103. Thereafter at step 1590, server terminal 105 is configured to update user playlist database 863 to update stored information corresponding to the bookmarked music clips for the particular device user."; Paragraph [0071], "In this manner, in accordance with the various embodiments of the present invention, device vendors may be preferably selected and displayed for purchase of bookmarked music clips who correspond to the actual vendors of the music marker devices."). Note that when the server terminal does not find a matching vendor ID (failing to find a received vendor identifier at a host system), the server terminal transmits bookmarked music clip information to a user terminal based on its terminal ID (downloading a program associated with a received hardware identifier representing a target system). Examiner would like to point out that although Deguchi does not expressly teach downloading a program file, however, Deguchi does teach downloading bookmarked music clip information. As previously pointed out in the Final Rejection (mailed on 11/12/2009), those of ordinary skill in the art would readily comprehend that downloading bookmarked music clip information is functionally equivalent to downloading a program file.

Third, with respect to the Applicant's assertion that there is no teaching or suggestion in McLlroy of a program associated with the recited hardware identifier representing the recited target system being stored at such application source, the Examiner respectfully submits that McLlroy clearly discloses "storing a program associated with said hardware identifier at the host system" (see Column 18: 1-5, "… a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915."; Column 19: 21-23, "… applications are located at application source 915 (e.g., a site on the WWW) …"). Note that applications are stored in the application source and located by the software manager using the hardware information.

Fourth, with respect to the Applicant's assertion that Deguchi does not teach or suggest a program associated with a received hardware identifier representing a target system, the Examiner respectfully submits that the Examiner has addressed the Applicant's argument in the second reason hereinabove.

Therefore, for at least the reasons set forth above, the rejections made under 35 U.S.C. § 103(a) with respect to Claims 1, 6, and 11 are proper and therefore, maintained.